SUPPLEMENT TO

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Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber, Public Office Buildings, Bangalore on Tuesday the 22nd November 1910, at 12 noon.

PRESENT.

T. ANANDA ROW, ESQ., B.A., C.I.E., DEWAN (Presiding).

Ex-Officio Members.

K. P. PUTTANNA CHETTY, ESQ. (First Councillor).

H. V. NANJUNDAYYA, ESQ., M.A., M.L. (Second Councillor).

ADDITIONAL MEMBERS.

Official.

1. RAJAKARYAPRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.
2. D. DEVARAJ URS, ESQ.
3. D. SHAMA RAO, ESQ.
4. M. MUTHANNA, ESQ., RAO BAHADUR.
5. S. NARAYANA RAO, ESQ.

Non-Official.

1. RAJAMANTRAPRAVINA C. SRINIVASIENGAR, ESQ.
2. SYED AMIR HASSAN, ESQ.
3. M. C. RANGIENGAR, ESQ., B.A.
4. D. VENKATARAMAIYA, ESQ., B.A.
5. A. RAMANNA, ESQ.

ABSENT.

Official.

K. S. DORASWAMI IYER, ESQ.

Non-Official.

M. NARAIN RAO, ESQ.

PRESENT.

S. HIRIYANNAIYA, ESQ., M.A., B.L. (Secretary).

DEWAN.—We have a very heavy agenda paper this time and so, in the case of many Bills, it has been proposed to suspend the ordinary rules of business so as to permit of their being taken into consideration by the Council. The object of this is not to hurry on the Bills through the Council. But we are only paying a tribute to the thoroughness and the ability with which the Select Committees have reported on the Bills. There is now very little difference of opinion among the members; but if there is any point on which further discussion is necessary, it shall certainly be allowed; otherwise, the desire is that no time should be lost on mere adjournments.

The Secretary then reported to the Council that the Mysore Census Bill and the Mysore Treasure Trove Bill received the assent of His Highness the Maharaja on the 24th August 1910 and the 6th September 1910, respectively; and that a petition on the Mysore Limitation Bill had been received from one Venkataramaiya of T.-Narsipur, praying that the period of limitation fixed for possession of hereditary offices (like Shanbhogi and Pateli) be extended to 60 years or at least to 30 years.

A Bill to provide for the regulation of the possession and sale of all poisons in certain local areas and the importation, possession and sale of white arsenic generally.

MR. K. P. PUTTANNA CHETTY.—Sir,—The Council is aware that at the meeting of the Council held on the 13th of January 1910, the Poisons Bill was considered by this Council and the resolution that was then arrived at was that it be taken up and passed at a subsequent meeting of the Council. I have now the honor to propose that the Bill to provide for the regulation of the possession and sale of all poisons in certain local areas and the importation, possession and sale of white arsenic generally be passed.

MR. M. C. RANGIENGAR, in seconding the motion, said:—

Sir,—In and about Bangalore a Regulation of this kind is absolutely necessary. The Regulation merely seeks to place under some check the possession for sale and sale of certain poisons in general and of white arsenic in particular. The restrictions are imposed entirely in the interests of public safety and well-being. I need not say much, therefore, to commend such a Bill to the Council. I beg to second the motion.

The motion was put and agreed to.

A Bill to recognize the representative character of the Administrator-General of Madras.

MR. S. NARAYANA RAO.—Sir,—This Bill to recognise the representative character of the Administrator-General of Madras has passed through all the stages of introduction, reference to and consideration by a Select Committee and consideration by this Council, and only awaits the final stage of being passed. I now move that the Bill be passed.

MR. C. SRINIVASIENGAR seconded the motion, which was put to the Council and carried.

The Tank Panchayet Bill.

In moving that the words "1st day of January 1911" be inserted at the end of sub-clause (3) of clause 1 of the above Bill, Mr. K. P. Puttanna Chetty remarked that it was intended to fix an early date for the operation of the Bill as there was no object in postponing it to a more distant date.

MR. A. RAMANNA.—Sir,—The sooner the Bill is passed the better it would be. The fixing of the 1st of January 1911 as the date of operation of the Bill is useful in this way,—that there will be six months before the cultivation season begins. I therefore beg to second the motion.

The motion was put to the Council and carried.

MR. K. P. PUTTANNA CHETTY then moved that the Tank Panchayet Bill as adopted by the Council be passed and in doing so, said:—

Sir,—I beg to move that the Tank Panchayet Bill be finally passed by the Council. In making this request I crave permission to say a few words about the important step we are taking in attempting to revive village autonomy in Mysore with reference to one of its most important and pressing requirements. We receive from all sides requests for the formation of rural bodies to manage purely rural affairs, subject, of course, to proper control. For example, one of the questions mooted year after year at the annual gatherings of the Representative Assembly refers to the institution of Village Courts. More recently there is evidence of a desire that village schools should also be brought under some kind of local control. It may be said without fear of contradiction that to the rural public as well as to the Government the proper maintenance of the village tanks upon which the prosperity of our agricultural population so largely depends is a matter of vital concern. There is, therefore, considerable justification for starting the new experiment on the most popular lines and for trying to stimulate and utilise the public spirit of the village in a matter so closely affecting their welfare. It is with this object that this important Bill was framed and placed before this Council. In addition to the care and forethought bestowed on the Bill when it was framed, it has had the advantage of being referred to and considered by an exceptionally strong Select Committee whose recommendations, this Council has, with some slight alterations and additions, adopted at the last meeting. I need not therefore say much now on the different provisions in the Bill. Permit me, however, to make one remark in view of what the Royal Commission on Decentralisation in India have stated in their report, which was issued after the introduction of this Bill. That eminent body have discussed in para 3 of Volume I of their report the question of village organisation; and after carefully considering the large mass of evidence that was placed before them, they have recommended the constitution of Village Panchayets by gradual and tentative methods, that is to say, to quote the words of the report "by "establishing them in villages in which circumstances are most favorable by "reason of homogeneity, natural intelligence and freedom from internal feuds and "conferring on them only certain limited powers at the commencement. The "powers might be increased gradually as results warrant; and with success in one "village, it will become easier to apply the system in other villages." It will be seen that we have adopted in our Bill the substance of the above recommendation. Our desire is not to start Panchayets in every village but to institute them in select places only after satisfying ourselves that the conditions outlined above are fully satisfied. Nay, we have gone further by way of precaution and laid it down that before a Panchayet can be called into existence, the consent of a majority of the inhabitants and particularly of the land-owning classes shall be secured. Among the powers to be delegated to Panchayets the Commission recommend that they should have Civil and Criminal jurisdiction in petty cases, the power of administering village sanitation and of the construction and repair of local minor works, such as, wells and drinking water tanks. You will thus see that the power with which we propose to invest our Panchayets is not altogether without high authority, and I may add that nearly all the objections that can be urged against a measure of this kind have been discussed and ably answered by the Decentralization Commission in their report. We have not only taken all the precautions which prudence and forethought would dictate, but we have gone a little further and held out inducements to the people to make the scheme a success. I allude to the provisions regarding the creation of a special Tank Fund to which sums are credited which would otherwise go to the Government, and particularly to the remission of half the wet assessment in cases where the people of the village co-operate to such an extent as to restrict, in consideration of larger interests, the area of wet cultivation with reference to the available water in the tank. I have every hope that these provisions will contribute materially to the success of the scheme and perhaps also to the solution of some other important questions connected with our land revenue policy. In conclusion, I would invite the attention of this Council to the fact that, though the question of the resuscitation of communal life in villages has been agitated all over India, ours is, as far as I know, the first attempt in the direction of entrusting the Panchayets with such important powers as the construction, repair and maintenance of tanks, and if I may be permitted to do so,

I would take this opportunity of congratulating the Council on this important event so full of promise for the future. I trust that Hon'ble members will heartily accord their vote for the proposition which I have now the honor to move.

In seconding the above motion, MR. A. RAMANNA said.—Sir,—Communal institutions are not new to India. They have been in existence for a long time though latterly they have declined. There is now an attempt in this Bill to give powers to the community and also to teach them the principles of self-reliance and self-sacrifice so essential for civilised and progressive government. The rural public must be able to manage their own affairs, at least with reference to sanitation, wells, tanks, etc. This Bill has got all that is needed to revive that old system. It creates an interest for the raiyat in the tank and, as any improvement effected in it is for his own benefit, everything that lies in the power of the villagers concerned will be done to maintain and improve it. That tanks have been very much neglected for a long time past, cannot be disputed. The Government are paying special attention to them now. I have great pleasure in seconding the motion.

MR. M. C. RANGIENGAR, in supporting the motion said,—Sir,—I beg to congratulate the Council on the success which has attended the Bill. It is a very important measure both on account of its intrinsic utility and its educative value in reviving and promoting the communal spirit, the disappearance of which we all greatly deplore. It is very gratifying to see that Government have taken steps to improve the condition of the people and have extended their mental horizon. The good intentions of Government are nowhere more apparent than in the liberality with which they come forward to make a substantial remission in favor of the raiyat in the case provided for in the Bill, and this in spite of the vehement and eloquent opposition of the Survey Superintendent, MR. DESHMUK SHAMA RAO.

Sir, the Government is most anxious that an opportunity should be given to the people to revive their communal system. The people are expected to co-operate heartily with the Government by eschewing their selfishness and working harmoniously for the common weal. Government may be liberal enough to offer substantial concessions to the people and the people may be willing to enjoy the concessions so offered. But a great deal rests with the Government officers who are on the spot. They have to guide, advise and encourage the people, and when the people are split into factions, the Government officers are expected to throw oil on the troubled waters. If the people and the Government officers on the spot co-operate and make the experiment a success, we may hope for greater and more important measures to be passed by Government securing for the people autonomy in all the material interests which concern village life.

The motion was then put to the Council and carried.

A Bill to provide for the prevention of smoking by juveniles.

In moving for leave being granted to introduce the above Bill, MR. H. V. NANJUNDAYYA said,—Sir,—You must have observed of late that the smoking of cheap cigars and cigarettes has been spreading among boys, especially in large places like this City. Whatever may be its effect on grown-up men it is admitted by everyone that it is a most pernicious habit for young persons. It may be objected to a measure of this kind that it acts as an unnecessary restraint on individual liberty, and gives undue powers to the Police to interfere with the concerns of private people. That it has these drawbacks to some extent cannot be denied. But it is now coming to be more and more recognised that interference with private liberty to do what is wrong in itself or harmful to the welfare of society is quite justified, and all legislation in the most advanced countries which is inspired by socialistic ideas is of this sort. Especially are such restrictive measures commended when they are meant to safeguard the moral or physical welfare of juveniles; and there are already certain restrictive provisions of this nature in force in factory laws and Excise rules.

We have borrowed the provisions of this Bill from an ordinance in force in the colony of Ceylon. A representation requesting Government to make a provision of law of this kind was first made during the sittings of the Dasara Representative Assembly of 1907.

The provisions of the Bill are intended to protect juveniles. It provides that on the first occasion on which a boy under 16 years of age is found smoking the matter shall be reported to the parent or guardian or the schoolmaster under whom the boy studies. The object of reporting thus is that the boy shall not be liable to punishment for the first offence, but that the parent or guardian or schoolmaster may take adequate steps to correct him. If three months afterwards, he is again found smoking in a public place, the Police have power to take him to a Magistrate and as the punishment to be then awarded must be such that it should not attach any stigma which will affect his career in after-life, the Bill provides that it shall be a small fine of a rupee or that the boy shall be subject to whipping in the way of school discipline, which should be carried out in a private place in the presence of a Magistrate. These are the few and simple provisions of the Bill and I hope that they will commend themselves to the honourable members of this Council. I move that leave be granted to introduce this Bill.

MR. SYED AMIR HASSAN, in seconding the motion, said that such a Bill is very necessary.

MR. A. RAMANNA supported the motion. The motion was put to the Council and carried.

A Bill to amend the Government Savings Banks Act, 1873.

MR. H. V. NANJUNDAYYA moved that the Bill to amend the Government Savings Banks Act, 1873, as applied to Mysore be read in Council.

MR. A. RAMANNA seconded the motion.

The motion was put to the Council and carried.

MR. H. V. NANJUNDAYYA, in moving that the Bill to amend the Government Savings Banks Act be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being taken into consideration by the Council, observed—

Sir,—The measure is a very simple one, and it is not likely that it will be thought to need any more consideration or that there will be any objection to it being taken to its further stages. I, therefore, beg to move that Rule 45 and the other rules of business be suspended in this case and that the Bill be not referred to a Select Committee and that it be taken into consideration by the Council to-day.

MR. S. NARAYANA RAO seconded the motion.

MR. A. RANGASWAMI IYENGAR.—Sir,—In making my remarks I do not want to minimise the advantages to be derived from the measure which is now proposed to be adopted. I think that, if some time be given and the Bill be referred to a Select Committee, it would be possible to make some slight alterations in the Savings Banks Act so as to extend its usefulness. It has been the practice, of late, in banks and other institutions to allow what they call joint deposits. Power is given to the depositors to act jointly and they have also the right of survivorship. If such a provision is introduced into this Act, it will save a great deal of trouble. In that case nomination may be dispensed with. Very often a man may not be able to think of a proper nominee. And even if a person is appointed, some accident may happen to him in which case the provision of law would be inoperative. Of course, my suggestion is also open to the same objection; but, on the whole, I think the system of joint deposits is more advantageous than that of nomination. Just at present I am not able to say whether it can be effected by changes in the rules and whether, even if Government are prepared to make the changes, the present provisions of the Act will be sufficient to legalise such a measure. There is no urgency about the matter. I think it is better the Bill is referred to a Select Committee, so that the members may have time to consider the proposal.

MR. M. C. RANGIENGAR was also of opinion that the system of joint accounts with survivorship might be considered.

MR. D. SHAMA RAO, in supporting the original motion, said,—Sir,—In cases in which *purdanishin* ladies are the nominees, they cannot appear personally. But the Bill as it is now drafted will suit the convenience of many poor people. Generally, there is the contingency of some untoward event happening to the nominee, but we

cannot provide for all contingencies. Under the Life Insurance Rules a person has, got the power to change nominations made by him. In the same way, a person may cancel the nomination he once made. But if the system of joint deposits is introduced, one of the depositors cannot cancel a previous nomination unless the other depositor agrees. So he will lose the advantage he now has under the present provision regarding nomination. On these grounds, I think that the present provision is better than allowing the system of joint deposits. I propose that the Bill may stand as it is.

MR. H. V. NANJUNDAYYA, replying said,—Sir,—If we are so minded, we may embody the suggestions of Mr. Rangaswami Iyengar in a separate measure. I am not particular in opposing the suggestion that the matter be referred to a Select Committee if that is the general sense of the meeting. I have no objection; but as the proposal of Mr. Rangaswami Iyengar has nothing to do with the present Bill, there will be no harm in taking the course suggested by the original motion before this Council.

DEWAN.—It cannot be said that there is no urgency about this measure. There have been cases in the past and I believe there are cases pending now as to the question of succession. I doubt very much whether the Account Department will agree to the proposal about joint investments. However, to take action on these lines may require the sanction of the Government of India, as the Savings Banks Act was introduced into Mysore in the pre-Rendition days. It is always an advantage to go step by step. So I would propose that we may go on with this Bill now. If any amendment is proposed we shall consider it.

The motion was then put to the vote and carried.

The Bill was then considered and adopted by the Council.

MR. H. V. NANJUNDAYYA'S next motion to take up and pass the Bill at a subsequent meeting was seconded by Mr. S. Narayana Rao and carried by the Council.

A Bill to amend the Mysore Municipal Regulation, 1906, in certain respects.

MR. K. P. PUTTANNA CHETTY, in moving that the Bill to amend the Mysore Municipal Regulation, in certain respects, be read in Council, said,—Sir,—At the meeting of the Council held on the 15th August 1910, I sought for leave to introduce the Bill; and, after hearing my statement of the case, the Council was pleased to give leave for the introduction of the Bill. My present motion is that it be read in Council. It is not necessary for me to go over the same ground again. The speech I made at that meeting is contained in the Supplement to the *Mysore Gazette* dated the 18th August 1910. I then referred to the several clauses and explained the necessity for their introduction in the Mysore Municipal Regulation. Clause 3 of the Bill is framed with a view to empower the Municipal Council to seize, through a duly authorised officer, articles which are suspected to have been smuggled. The present Regulation is very defective in this respect—in that it does not require a license to be taken out for the sale of such articles. Nor does it empower a Municipal officer to search for and seize those articles. It is to remedy these and such other defects that the amendment has been proposed by Government. It is also proposed to give power to the Municipality to regulate the traffic in respect of hackney carriages and carts carrying passengers and goods for hire. At present there are no rules in this Regulation providing for all this. Another small matter is that it is proposed to raise the tax which is to be levied upon motor cars and motor bicycles. I beg, therefore, to move that the Bill be read in Council.

MR. S. NARAYANA RAO seconded the motion.

MR. A. RANGASWAMI IYENGAR.—Sir,—In this connection I would simply confine my observations to the first clause of the Bill. That is with reference to the modifications which are proposed in Section 48, sub-section (1), clause (*k*). This addition is proposed on the ground that there has been a substantial omission when the Municipal Regulation was passed. From the general principles and the policy of the Act, I am led to infer that this is not an oversight. The Act, as it stands, seems to provide for the taxing of trade generally without imposing any restrictions

as to the liberty of persons to take up any particular trade. Such restrictions interfere with the freedom of choice of the individual. The object of the Regulation is principally to raise the revenue for certain purposes and that is raised in three ways—by the land-tax, the house-tax and the profession or trade tax. The octroi is a fourth source of revenue. It is supposed to be collected on articles before they enter the municipal limits of a town. They are not to be subjected to any tax after they come in; because, that will be not only difficult to carry out in practice but it will lead to an amount of prying into people's affairs. I understand that the octroi is levied on very petty items such as betel leaves, cocoanuts, both dry and green, tobacco and other articles. Those who deal in these articles are very petty traders and they pay a very small tax. The Bill requires them to take out licenses. It would be highly inconvenient to the individuals concerned to do so. They will be prevented from eking out their livelihood by resorting to petty trades. In fact, the object of this provision is, if I may so put it, to make up for the deficiency of the executive by imposing serious disabilities on traders. I think that such a measure requires careful consideration by a Select Committee and it is also desirable that the honourable members should have time to look into the provisions. I would therefore recommend that some time be given for the examination of the Bill.

MR. D. VENKATARAMAIYA who followed was of the same opinion as his predecessor and said—

Sir,—I heartily second the observations made by my learned friend. This requires a good deal of consideration. It should be well threshed out by a Select Committee and viewed in different aspects. In the city of Bangalore, where the Municipal Regulation has been in force from 1871, we find that taxes are levied, some under the Regulation, others under octroi rules, yet others under mohatarfa rules. There are big shops which sell only large quantities of dutiable articles and there are also retail shops. But this Bill requires that licenses should be taken out by keepers of both these shops. Shop-keepers will have then to pay the shop tax under the mohatarfa rules and, in addition, will have to take out a license under the rules now to be introduced. Most of our petty shop-keepers sell cocoanuts, dry and green, gram and other things. This is one class. There is another class who sell piece goods and who also come under octroi rules. And besides these articles, there are others which are now being brought under octroi rules; so that every trader in the State will come under the rules, if the Bill is introduced in the form proposed. If the Bill is referred to a Select Committee, it will be carefully threshed out.

In view of the above observations, the motion on the agenda that the Bill be not referred to a Select Committee was withdrawn by the mover; and the Bill was referred to a Select Committee consisting of—

Messrs. (1) Rajakaryapravina A. Rangaswami Iyengar,
(2) H. V. Nanjundayya,
(3) Rajamantrapravina C. Srinivasiengar,
(4) D. Venkataramaiya,
(5) S. Narayana Rao,
(6) Devaraj Urs and
(7) K. P. Puttanna Chetty (mover).

The next two motions were accordingly allowed to be withdrawn.

A Bill for the Regulation and control of Hackney Carriages in Mysore.

In moving that the above Bill be read in Council, MR. K. P. PUTTANNA CHETTY said,—Sir,—the proposition which I am now called upon to move refers to the introduction of a Bill for the regulation and control of Hackney Carriages in Mysore. There is at present no law on this matter applicable to the whole State. As pointed out in the statement of objects and reasons, the Bangalore City Hackney Carriage Regulation of 1887 applies only to that city. The springing up of a large town in the Kolar Gold Fields area with considerable vehicular traffic within its limits has rendered it necessary that that traffic should be subjected to some control. Representations asking for suitable action have been received from the Kolar Gold Fields Sanitary Board from time to time. The Government of Mysore have

been unable to move in the matter for want of necessary legal provision. The Mysore Mines Regulation of 1906 authorises the Government to make Regulations in certain matters such as the sanitation of the area, but the control of traffic does not fall within its scope. On a careful consideration of the matter, Government have come to the conclusion that the enactment of a law based on the existing Hackney Carriage Regulation of Bangalore, but applicable to the whole State, is the best course to adopt. The Bill, which I have now the honor to introduce, is the outcome of the decision and it is unnecessary for me to say more about it than that it applies ordinarily only to Municipal areas and that it authorises Municipal Councils to frame rules for the regulation and control of vehicular traffic. Such rules have however to be confirmed by the Government of Mysore before they can have the force of law.

Clause 5 of the Bill empowers Government to make rules even for areas outside Municipalities should they consider such a course desirable or necessary. As members of this Council are aware, regular jatka services have been established between some of the railway stations and towns in the State, *e.g.*, between Bowringpet and Kolar, Bangalore and Chikballapur, Bangalore and Hosur and in several other parts of the State. The ramshackle condition of the jatkas, the sorry state of the ponies and the dilapidated harness patched up with twine or whatever else comes to hand, often resulting in dire accident to occupants, are all within our experience. It is necessary, therefore, to exercise some supervision over these public conveyances in the interests of public safety.

As the needs and requirements of a town like that of Bangalore may be different from those of other parts of the State and as the present Bill is based chiefly on the Regulation of 1887 which applies exclusively to Bangalore City, it is desirable that the Bill should receive the scrutiny of a Select Committee. I now move that the Bill for the regulation and control of Hackney Carriages be read in Council.

MR. D. DEVARAJ URS seconded the motion, which was put to the Council and carried.

MR. K. P. PUTTANNA CHETTY then moved that the above Bill be referred to a Select Committee consisting of—

(1) Mr. S. Narayana Rao,
(2) „ D. Devaraj Urs,
(3) „ Rajamantrapravina C. Srinivasiengar,
(4) „ M. Narayana Rao,
(5) „ D. Venkataramayya and
(6) The mover.

The motion was seconded by Mr. D. Devaraj Urs, put to the Council and carried.

A Bill further to amend the Mysore Chief Court Regulation, 1884.

MR. H. V. NANJUNDAYYA, in moving that the ordinary rules of business regarding publication be suspended and the above Bill be read in Council, said—Sir, there are various motions to-day which refer to the suspension of the rules of business. The object is not to cut short discussion. In most cases the Bills have been carefully considered by Select Committees and so there is no necessity to delay their being taken into consideration by the Council. In a few other cases some days have been wanting in the interval between the publication and this day to make up the required number; and as such rules which require an interval to elapse between these two dates are meant only to ensure that proper notice has been given to members and as notice has reached them as a matter of fact, we have had recourse to this expedient of asking that certain rules be suspended. It is not the wish of Government to throw any obstacles in the way of honourable members discussing the Bill. If further consideration and discussion are necessary, Government is not disposed to press this particular motion to suspend the rules of business. In the motion that I am now just going to make, it is not this want of interval that has obliged us to ask for a suspension of the rules, but the fact that we have received representations from the Chief Court that there has been a congestion of work there and that appeal cases cannot be got through as expeditiously as is desirable. They

recommend that both Civil and Criminal appeals which are preferred to that Court from Courts in the Bangalore Division, *i.e.*, from the decisions of Munsiffs, and Subordinate Judges and Magistrates of the First Class, should be heard by a single Judge instead of by two Judges, as, in that case, twice the number of cases can be disposed of in the same time. But Government considered it undesirable to accede to the proposal in the matter of Criminal appeals. The Bill, therefore, enables the disposal of Civil appeals by a single Judge. This will help the Chief Court to dispose of more Civil appeals than hitherto. Provision will be made for second appeals in such cases by suitably amending the Code of Civil Procedure. This will no doubt throw some new work on the Judges, but, as only a fraction of the first appeals go as second appeals the net result of the measure is bound to be conducive to speedier disposal of work in that Court.

MR. S. NARAYANA RAO seconded the motion which was put to the Council and carried.

MR. H. V. NANJUNDAYYA then moved that the above Bill be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being taken into consideration by the Council. Mr. S. Narayana Rao seconded the motion.

MR. M. C. RANGIENGAR.—Sir,—My ideal of judicial arrangement is that, at the cheapest cost possible, the judgment of the highest tribunal must be obtained. It is provided by law that there shall lie but one appeal to a Bench consisting of two Judges of the Chief Court from judgments delivered by Courts in the Bangalore Division. Parties should consider themselves very fortunate in having two Judges to determine the appeal. If it were practicable, an appeal to two Judges of the Chief Court must be allowed from judgments of the Courts of other divisions of the State also. The advantage that the people of the Bangalore Division have is that they have to incur only the minimum cost. There is no further temptation to spend money. My submission is that beyond the exceedingly guarded statement of objects and reasons, there are no facts to show that there is congestion of work in the Chief Court. The other reason is that the Courts of the Bangalore Division must be brought into line with the Courts of other divisions. Assuming that there is a congestion of work in the Chief Court, what is its nature and what is its extent? No facts and figures have been placed before the Council to show that the congestion of work complained of is such as not to be overcome by an extra sitting. If it is only a small congestion, an extra sitting will be enough to remove it. The judges of the High Court of Madras sit on five days in the week and sometimes on six. But here, in the Chief Court, the judges sit only on three days. If the congestion is such as can be reduced by an extra sitting or two, it does not justify the curtailing of a valuable privilege enjoyed by the people. My submission, therefore, is that this is a matter which is to be examined more closely than it can be at such a short notice. The agenda paper was received by me only on the 17th. I do not know what the date was in the case of others and so I had no opportunity of furnishing myself with the necessary data for supporting or opposing the Bill.

MR. H. V. NANJUNDAYYA then said,—Sir,—Since there is difference of opinion, I beg to withdraw the motion not to refer the bill to a Select Committee and propose that the Bill be referred to a Select Committee consisting of—

Messrs. C. Srinivasiengar,
A. Rangaswami Iyengar,
D. Venkataramaiya,
M. C. Rangiengar,
S. Narayana Rao, and myself.

Mr. S. Narayana Rao seconded the above motion, which was put to the Council and carried.

The remaining motions in regard to the above Bill were allowed to be withdrawn.

A Bill to amend the Mysore Local Boards Regulation, 1902.

In moving that the Bill to amend the Mysore Local Boards Regulation be read in Council, Mr. K. P. Puttanna Chetty said:—

Sir,—The proposition I have now the honor to move refers to an amendment of the Mysore Local Boards Regulation. This Regulation which was enacted in 1902

has been found to be not sufficiently comprehensive to provide for the needs and requirements of non-Municipal areas in the matter of sanitation, control and regulation of offensive trades, regulation of heavy traffic and such other matters. As the Municipal Regulation cannot apply to such localities, the only provision of law besides the Local Boards Regulation under which action can be taken by the authorities in sanitary matters, is the Village Sanitation Regulation of 1898. But even this is an exceedingly meagre enactment, and does not empower the Government to frame rules, for example, for the regulation of musafirkhanas, slaughter-houses and cart-stands. It has, therefore, been found necessary to amend the Local Boards Regulation so as to provide comprehensively for all the matters referred to above. The necessity for this amendment has actually arisen in some places. For instance, a large majority of the people of Sravanabelagola belong to the Jain persuasion and they have several times petitioned the Government that the location of slaughter-houses in places which are particularly objectionable to local sentiment should not be permitted. It was found that action in the matter could not be taken in the absence of the requisite legal authority. Again, cases have arisen where sale of articles otherwise liable to the control of a local body such as a Municipality has been carried on by persons just outside a Municipal area, thereby evading the Municipal Regulations and also interfering with the legitimate custom of properly licensed vendors of such articles within Municipal limits. There is no means now of reaching such people through the law. Having regard to these circumstances, the Government have considered it desirable that power should be given to the District Boards to frame such bye-laws as may by them be deemed necessary in regard to the regulation, inspection and control of musafirkhanas, markets, slaughter-houses, places used for carrying on dangerous or offensive trades, cart-stands, burial places and burning grounds, for the inspection of hotels, bakeries, sweetmeat shops and other places intended for the sale of human food or drink and for the prevention of nuisances in respect of water-supply and public health generally. The occasion has also been utilised to provide for another matter, namely, the control of unwieldy traffic on roads within the jurisdiction of a District Board. Instances have occurred recently where heavy traction engines have been made to ply in certain places causing considerable damage to the roads and culverts and inconvenience and danger to the public. It is felt that some control over the use of public roads for such purposes is necessary and it is therefore proposed to prohibit the transit of unwieldy vehicles that may be deemed likely to cause injury to the roadway or to any construction thereon or risk or obstruction to other vehicles or pedestrians, except on payment of regulated fees or tolls and on the observance of such conditions as to time, mode of traction, lights and such general precautions as may be prescribed generally or specially in regard to such cases. I am sure that the members of this Council will agree as to the necessity for this provision.

In conclusion, I may add that the changes now to be enacted are to be found in the corresponding enactments of British India and in regard to certain matters in our own Municipal Regulation. Further, the amending Bill is only of an enabling character and it is not incumbent on any District Board to take action under these clauses unless it finds a clear necessity to do so. Proper safeguards have been devised against unwise or hasty action by any District Board by rendering it necessary that the drafts of all bye-laws intended to be framed by the District Boards should be first published and criticism invited and if any received, duly considered. Further, these bye-laws cannot acquire the force of law until they are sanctioned by Government who have got the power of making such modifications in them as may to them appear desirable or proper. I now move that the Bill be read in Council.

MR. D. DEVARAJA URS seconded the motion, which was put to the Council and carried.

MR. K. P. PUTTANNA CHETTY then moved that the above Bill be referred to a Select Committee consisting of—

(1) Mr. D. Devaraja Urs,
(2) „ S. Narayana Rao,
(3) „ Rajamantrapravina C. Srinivasiengar,
(4) „ D. Venkataramaiya,
(5) „ M. Narayana Rao, and
(6) The mover.

This was seconded by Mr. D. Devaraj Urs, was put to the Council and carried.

The Code of Civil Procedure Bill.

MR. H. V. NANJUNDAYYA.—Sir,—The Code of Civil Procedure now in force is an adaptation of the British Indian Act of 1882, which closely followed that of 1877. The Act of 1908 which came to force in British India from the 1st of January 1909 has widely departed from the old model, if not to a large extent in matter, in the arrangement of the different parts. As I have already mentioned this change in the speech with which I had the honour of introducing this Bill before this Council, I shall not take up any of your valuable time in going over the same ground.

With your permission, I shall draw attention to a few of the important additions and improvements introduced by this new measure.

The most striking change is the division of the Code into two parts; the main principles are grouped together in the Act proper, which can be altered only by the Imperial legislature and is common to the whole of British India. The matters of detail, which however are by no means less important for the administration of justice, are provided for by orders, which each Province is allowed to modify according to its exigencies by the acts of its committees constituted according to provisions contained in the Act. This feature of the Code is however only of subordinate importance for us, as we have only one Chief Court and can have one Rules Committee for the whole State.

There are, however, other changes which cannot but improve the administration of justice in a large degree when they come to be well understood and properly applied. I shall give a few instances of such additions, without attempting to exhibit them in their logical order.

One of the chief objects seems to have been to make pleadings more precise by narrowing the matters at issue before going to regular trial so as to save time and expense to parties. Orders VI, VII and VIII deal with this subject, and Section 153 of the Act gives a more comprehensive power than hitherto possessed by the Courts to amend any defect or error in any proceeding in a suit. The same object is served by the new provisions about admissions and denials contained in Orders XII and VIII and about the manner of framing and answering interrogatories in Order XI.

Many provisions are newly introduced for the purpose of ensuring that the relief obtained by the parties may be effectively secured for them. Section 46 provides that a decree-holder may obtain a temporary attachment of property in another jurisdiction before he can get his decree transferred there. The summary method of enforcing a receiver's liability (O. XL, R. 4) is a similar provision. Section 151 goes as far as is perhaps safe, if indeed it has not gone further, by saving the "inherent power" of the Court "to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court." In fact, if it were not for the well-known tendency of Courts of law to be guided by precedents, one could easily imagine that the doctrine of inherent power may be carried to dangerous lengths. The rule contained in Order XLI, R. 33 enlarging the powe of a Court of appeal is conceived in the same spirit of doing complete justice between the parties at all costs.

Some useful novel provisions have been introduced to supply defects in the old Code, or to modify procedure in the interests of judgment-debtors according to more advanced ideas. Thus there are rules about suits by or against firms (Order XXX) and about those relating to mortgages (O. XXXIV) which are fuller and more in accordance with the demands of equity and justice. Several new and useful provisions are contained in the Sections and Rules dealing with execution. A Court has power to get acts which ought to be done by a judgment-debtor done at his expense. [O. XXI, R. 32 (5).] The Courts are given power to decline to imprison parties in cases of restitution of conjugal rights, and to give maintenance to a wife who holds a decree in such a suit (R. 33). Special provisions are introduced in the interests of agriculturists in Section 61 and in the rules about attachment

and sale of agricultural produce. Section 91 is a useful provision in connection with suits about public nuisances, 97 to limit the liberty of reserving objections to preliminary decrees, and Section 103 to empower the Chief Court to determine issues of fact without remand.

I think these examples are sufficient to show that we are well advised in adopting the new Code of British India as the basis of our Civil Procedure. In framing our Bill, we have of course left out such provisions as can have no local application, such as those relating to special places and tribunals of British India of which we have no counterparts (Ss. 8, 45, 93, 109-112, 116-120, 125, 129, 140, and Orders and Rules V—22, XXI—4, XLV, XLIX and LI), provisions required on account of there being different Provinces with independent High Courts there (Ss. 25, 28 and 40); those relating to aliens and foreign Princes (Ss. 83-87) and those relating to suits against Government (XXVII—4-6).

The Bill has been subjected to detailed and careful examination by the Select Committee under the able and experienced guidance of Rajamantrapravina Mr. C. Srinivasiengar. In fact, the work occupied the members much longer time than was anticipated, and they had to obtain extension of time by the indulgence of the President. The thanks of Government are due to the non-official members who devoted their valuable time at considerable sacrifice to this rather dry and prosaic task.

The number of alterations proposed is somewhat large, but very few of them involve any matters of important principle, or raise any questions of controversy. The Select Committee has therefore recommended that this Bill be proceeded with without republication.

I shall now, with your permission, explain the more important changes made by the Select Committee; but, before doing so, I would first invite your attention to a small point which was raised at the recent sitting of the Representative Assembly. The representation referred to is that provision should be made to give judgment-debtor notice of an intended sale by restoring the provisions omitted by the Select Committee in para 2 of Rule 66 of Order XXI. The rules as now framed and as in force require that attachments and sales should be proclaimed at the place where property is situated and that the order should be posted in a conspicuous part of the property. To go further and prescribe service of notice would, in the opinion of Government, still further retard the realization of money due to decree-holders. There is no doubt that in some cases judgment-debtors may lose their property unjustly without receiving any notice, but such cases of real ignorance must be rare and do not seem to justify the enactment of a provision throwing further obstacles in the way of executing decrees of Courts. If, however, the members of the Honor'ble Council would desire to have such a provision, the Government would not stand in the way of their carrying an amendment to that effect.

MR. NANJUNDAYYA then referred to and explained the important changes made by the Select Committee in the several clauses of the Bill and moved that the report be taken into consideration and adopted by the Council.

MR. SYED AMIR HASSAN seconded the motion.

DEWAN.—The fact that no other honor'ble member of this Council has got any observations to make on this important motion shows the ability and thoroughness with which the Select Committee have threshed out this Bill. It gives me very great pleasure to put this motion to the vote.

The motion was then adopted.

MR. H. V. NANJUNDAYYA then moved that the word and figure "July 1911" be substituted for "January 19" in sub-clause (2) of clause 1 of the Code of Civil Procedure Bill.

MR. S. NARAYANA RAO seconded the motion, which was put to the Council and carried.

MR. H. V. NANJUNDAYYA.—Sir,—Until the Small Cause Courts Regulation provided for revision separately, it was thought that it was necessary to retain the application of clause 115 of the Bill to decisions by Courts of Small Causes. As it is now proposed to pass the Small Cause Courts Bill and the Civil Procedure Bill simultaneously and as both will come into force on the same day, it is no longer

necessary that Section 115 should apply to the decisions of Small Cause Courts. The Small Cause Courts Bill contains an appropriate provision on the point and I therefore move that the word and figure "and 115" recommended by the Select Committee to be omitted from clause 7 (*b*) be restored.

MR. S. NARAYANA RAO seconded the motion, which was put to the Council and carried.

MR. M. C. RANGIENGAR moved that the following sub-clause be added to clause 48 of the above Bill, *viz*:—"The exemptions as provided by Sections 6, 7 and 8 of the Mysore Limitation Regulation shall extend to a person entitled to make an application for the execution of a decree under this section, where such person is at the time from which the period of limitation is to be reckoned a minor, or an insane or an idiot," and said:—

Sir,—Under Sections 7 and 8 of the Indian Limitation Act (6 and 7 of the Limitation Bill) exemption from its operation is extended to minors and other persons under disability. This exemption relates only to suits and applications for which periods of limitation are provided in the second schedule of the Act, so that, when a cause of action accrues to a minor, it is not affected by the period of limitation prescribed by the Act. After attaining majority he has got three years at least within which to file a suit. Now the period of limitation contained in Section 230 of the old Civil Procedure Code is a special provision of limitation provided in the Code which is not affected by the Limitation Act. That section stands independently of the Limitation Act. Inasmuch as it is independent of the Limitation Act, the minor obtaining a decree through a next friend may have his remedy barred even before he attains majority. If, on behalf of a minor a year old, a next friend files a suit and obtains a decree but does not diligently execute it, the minor will find that his right to execute the decree is time-barred. In regard to the question whether the provisions of the Limitation Act apply to Section 48 of the new Civil Procedure Code, the High Courts in British India differ in view, some High Courts holding that the benefits extended to persons suffering from disability extend also to cases falling within Section 48 of the new Civil Procedure Code, and others holding that the special provision in the Civil Procedure Code is unaffected by the Limitation Act. There being a difference of opinion among the several High Courts, I respectfully submit that it is very necessary to protect the interests of minors obtaining decrees through their next friends by having their rights retained to them even after they attain majority. They may have three years after they attain majority within which period to execute the decree. As regards the word 'exemption,' I am not quite sure if it is a very proper word; strictly speaking, it is not an 'exemption'; it is more an extension or a benefit extended to persons suffering from disability. It is really a hardship to the minor that while, if a cause of action for a suit accrues to a minor, it is kept intact until he attains majority, the right to execute a decree obtained during minority is not so kept intact.

MR. A. RANGASWAMI IYENGAR, in seconding the proposition said:—Sir,—We are only trying to bring into force or give effect to the opinion of one section of the Judges in British India. The provision we are now trying to introduce is one the effect of which is to extend the period during which a decree is kept alive. The object of the law of limitation is to restrict the period during which a person may execute a decree. But in the case of minors and other persons under disability, as they are not able to protect their rights and prosecute them, it is only proper that they should receive the protection of the law and that they should not be compelled or subjected to the restriction imposed in this way. I think, therefore, that I am promoting the interests of justice in seconding the motion.

MR. D. VENKATARAMAIYA.—Sir,—If the decree should provide for a certain amount of interest to be given and if the time is to be prolonged to more than 12 years, as it would be by the introduction of a clause like this, it would be ruinous to the debtor. An imprudent debtor may go into insolvency and may have to start life again. The provisions in the Limitation Act which relate to the execution of decrees are conceived in the spirit of helping an imprudent judgment-debtor. So the Act provides that decrees for money should be executed within 12 years after they are passed. If more time is given to the decree-holder, unnecessary duties will be cast upon the judgment-debtor. Sometimes one disability may intervene before another is removed and thus there would be no end. I think, therefore, that

the provision in the British Indian Act is very beneficial. To prolong the agony would not be in the interests of the debtor or of the public.

MR. C. SRINIVASIENGAR.—Sir,—The material difference between a suit and a decree is this. In the case of a decree, time begins to run from the date of the decree, for on that date there is somebody who has till then efficiently represented the minor. But if, owing to any neglect on the part of the next friend, the decree is not executed, he alone must be held responsible; so that after the date of the decree the question is, who should be held responsible in case the decree is allowed to lie in abeyance? But in the other case, *i.e.*, when no suit is filed, there is, either no next friend or guardian, or if there is one, he does not care to protect the interests of his ward. If a person who has acted on behalf of the minor, taken action, filed a suit and obtained a decree, is subsequently guilty of negligence and does not execute the decree it is a matter entirely between him and his ward. It is a case of damages by reason of his neglect. To me it appears that there is a clear difference between the two cases. If a decree is obtained, it must be executed within the time allowed by law.

MR. A. RAMANNA.—Sir,—I am fully of the same opinion as Mr. C. Srinivasiengar. Dealings must have some finality and end within a certain time. Twelve years have been considered to be a long enough period for creating or extinguishing rights. So I do not think the period ought to be extended.

MR. S. NARAYANA RAO.—Sir,—All rules of limitation are a hardship but the convenience of society requires that there should be a limit to the period during which a person may enforce his rights. It is on that consideration of convenience that the law of limitation is based. Now, with reference to a decree, two cases arise. One is a decree obtained by a major or a person who is not disqualified under any law before the execution of the decree or before the expiry of 12 years mentioned in Section 48 of the new Civil Procedure Code Bill. He may die leaving a minor. In such a case the motion now made does not apply. For, when once time has begun to run no subsequent disability will stop it. The other case is where a next friend obtains a decree during the minority of a person on his behalf. The question is whether the person who took the trouble of obtaining a decree would allow it to remain unexecuted. It is highly improbable that he would thus neglect to reap the fruits of the decree which he obtained. But apart from this improbability, I should like to know if it is expedient to lay down a rule of law to meet certain exceptional cases. As I already submitted, rules of limitation are hard. The question is now whether it is advisable to make the period within which a decree must be executed longer than 12 years, the period fixed by clause 48 of the Code of Civil Procedure Bill. It seems to me that it is not, as other remedies are available.

MR. H. V. NANJUNDAYYA.—Sir,—Clause 48 is to the effect that where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made after the expiration of 12 years from—

(*a*) the date of the decree sought to be executed, or

(*b*) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or the delivery in respect of which the applicant seeks to execute the decree.

Then, there is an exception to this which is given in sub-clause (2), which states that nothing in this clause shall be deemed to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of 12 years where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within 12 years immediately before the date of the application.

Now, it is intended to give an exemption from this rule in the case of minors, etc. I do not think that the difficulty raised by my friend Mr. M. C. Rangiengar, is met by the answers of Mr. C. Srinivasiengar. The principle underlying the law regarding minors is that they take the benefit of all acts done on their behalf; but that, if acts are done against their interests, they have the opportunity of repudiating them. It is only in cases where a decree has been obtained by a person acting on behalf of a minor that the period of limitation of 12 years will run against him.

If the decree has been obtained before the minor comes on the *tapis*, Section 9 of the Limitation Regulation would prevent this exemption from causing any advantage to him. It is quite true that a proper guardian must have acted for the minor to obtain a decree. But it is not quite true to say that such a guardian would not fail to take steps to execute the decree. If a person can be so negligent of his own interests as not to execute a decree obtained for himself there is not the slightest difficulty in imagining a case in which a guardian may lose his interest in the minor and so fail to execute the decree obtained by him on behalf of the minor. It may happen that the guardian may die after the decree was obtained. In all such cases, there is nobody from whom the minor may seek redress. It may be that the act of the guardian was a self-imposed task and I do not suppose that a person who takes the trouble to obtain a decree on behalf of a minor should at the same time be compellable to take pains to execute it and realise its benefits. It is a work of charity so far and he ought not to be found fault with if he does not continue it. He may have his own interests to guard which may be more than he can manage, or he may be unable to execute the decree. In such cases there is no doubt that the interests of the minor will be sacrificed. But the interests of the minor are not always protected; for example, Section 9 of the Limitation Regulation itself shows it. Now the question for us to consider is, which of two equally reasonable alternatives is to be adopted? Here, on the one hand, there is the interest of the minor which has to be protected against all unjust attacks. On the other hand, there is the interest of the judgment-debtor. It is expedient that the liability under the decree should not be kept alive for a long time. It is on that account that this period of limitation has been provided on the presumption that, if a person does not take steps to execute a decree which he has obtained within that period, he may be supposed not to attach very much importance to it. So far as this question is concerned, Government is not either for or against the proposal being carried. We are willing to leave it to be determined by the Council; and if it is the wish of this Council that this amendment should be carried, Government would not stand in the way. So far as my own personal opinion is concerned, I think that, on the whole, the amendment is one that deserves to be carried. If a suit had not been filed on behalf of the minor, he would have the cause of action surviving in his favour, and would be able to file a suit on attaining majority. Why, then, should it make a difference if somebody, perhaps officiously, obtains a decree on his behalf and then fails to execute it? Why should not the minor be placed just in the same position as he would be in if a suit had not been filed? I would therefore vote for the carrying of this proposal so far as I am personally concerned.

MR. D. SHAMA RAO.—The question now is whether it is the interest of the judgment-debtor or that of the minor which is to be protected. It is the duty of Government to guard the interests of the minor. The amendment of Mr. Rangiengar therefore seems reasonable.

MR. K. P. PUTTANNA CHETTY said that so far as his individual opinion was concerned, his sympathies were with the judgment-debtor in this matter.

MR. M. C. RANGIENGAR.—I may be allowed to say a few words in reply. After what Mr. H. V. Nanjundayya submitted to the Council, there is very little for me to say by way of reply. Those who opposed my motion thought that this amendment was of a speculative character and was not suggested by any cases that have arisen in practice. But there are concrete cases in which hardship has resulted to the minor. No less than 12 such cases are pending in Mysore now. Again another objection raised was that the period of exercising the right would be indefinitely prolonged. Take the case of a cause of action for a suit. Is not the period indefinitely prolonged? In cases where there are successive disabilities, even the period allowed for instituting the suit would be indefinitely prolonged. Now, so far as a case in which a cause of action has accrued to a minor is concerned, it is clear that the right to institute the suit is kept alive until he attains majority. But if the cause of action accrues after the period of minority, no subsequent disability stops it. If it accrues during minority, the minor has got the benefit of Sections 6 and 7 of the Limitation Regulation. In the case of a decree, the cause of action accrues from the date of the decree. It is not really a cause of action, it is a decree, because the claim is merged in the decree. Then it was submitted for the consideration of the Council that the interests of the judgment-debtor also should be protected. I fail to understand how his interests need be protected. It was said that, if the period were

extended, the debtor would have to pay a large sum in the shape of interest. Can he not prevent the interest from accumulating by paying the judgment-debt as soon as he can? My friend Mr. D. Venkataramaiya observed that certain insolvency provisions are being enacted now to protect the interests of the judgment-debtor and that if the amendment I propose be passed into law, it would prevent the benefit of those provisions being extended to him. My argument was that the same indulgence which was shown to the minor in the matter of filing a suit may be shown in the matter of executing a decree also. Mr. C. Srinivasiengar said that the minor will have a claim for damages against his guardian on account of loss sustained by his neglect. But nowhere does the law say that, merely because a next friend who obtains a decree on behalf of a minor fails to execute it he or his property is liable to make good the loss so sustained by his failing to execute the decree.

With the permission of the President, Mr. H. V. Nanjundayya remarked that though he was in favor of Mr. Rangiengar's amendment generally, he would not vote for it if it applied to pending cases or to decrees already barred by time. Mr. Rangiengar agreed and said that he had no objection to the amendment on the paper being suitably modified. After some further discussion as to the wording of the amendment, the Council adopted by 8 to 5 the following amendment in place of the one originally moved by Mr. Rangiengar:—

"The provisions of Sections 6, 7 and 8 of the Mysore Limitation Regulation shall, as far as they are applicable, extend to a person entitled to make an application for execution of a decree under this section, where such person is at the time from which the period of limitation is to be reckoned a minor, or insane or an idiot; provided that this shall not empower a Court to make an order for the execution of a decree where at the date of the coming into force of this enactment it could not make such an order."

MR. H. V. NANJUNDAYYA.—Sir,—I beg to move that the words "together with a copy of the memorandum of appeal to be furnished by the appellant at the time of filing the appeal" be inserted after the expression "and a like notice" and before "shall be sent" in para (1) of Rule 14 of Order XLI.

The Code requires that a copy of a plaint shall be served on the defendant along with the summons. But a similar rule does not exist with regard to appeals. The reason for the distinction seems to be that the opponent in an appeal who has appeared and contested the suit in the lower Court would be able to understand more or less clearly the grounds that are likely to be urged against him in the Court of appeal. A representation was however made to Government in the last Representative Assembly that a provision to this effect may be made. This has been provided for in respect of appeals presented to the High Court of Madras by rules made in 1902. It seems to Government that this would be a useful provision entailing very little additional trouble on the parties. The motion may be adopted by the Council.

MR. VENKATARAMAIYA seconded the motion, which was put to the Council and carried.

The motion for the omission of the words "or otherwise" in Rule 10 of Order XI having been moved by Mr. H. V. Nanjundayya and seconded by MR. S. Narayana Rao, was adopted by the Council.

MR. H. V. NANJUNDAYYA, then moved that the Code of Civil Procedure Bill as amended be taken up and passed at a subsequent meeting of the Council. Mr. D. Venkataramaiya seconded the motion, which was put to the Council and carried.

A Bill to consolidate and amend the law relating to Guardians and Wards in Mysore.

MR. S. NARAYANA RAO, in moving that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Guardians and Wards in Mysore be taken into consideration and adopted by the Council, said:—

Sir,—This Bill was, at the last meeting of the Council, referred to the Select Committee and I beg to formally present the report of the Committee which has already been printed and circulated among the members. The Report may therefore be taken as read.

It will be noticed that the Committee have made very few alterations in the Bill. I do not therefore wish to occupy the time of the Council by dilating on the same. As one of the honourable members of the Committee has added a note to the report in certain respects, I may be permitted to make a few observations on the same.

The first two paras of the note deal with the definition of a minor. One of the fundamental principles of Legislation is that the State can legislate for its own subjects whether natural born or domiciled. A foreigner who enters the State without any intention of changing his domicile is governed by the principles of private International Law according to which his capacity to contract, etc., is regulated by the laws of his own country with certain limitations. We might have therefore safely omitted without prejudicing anybody in the definition of the word "minor" in clause 3, sub-clause (1), the words, "or if he is not domiciled in Mysore, has not attained majority according to the law to which he is subject." In order to remove the doubts expressed in some quarter that when steps have to be taken for the protection of the property and persons of foreigners including European British subjects their age of majority might be cut down to 18 years while they are still minors according to their personal law the said clause was put in the Bill. This definition of a minor is for the purpose of this Bill alone. It cannot be taken to determine the capacity of a person for contractual purposes or for the purpose of any other Regulation. Certain clauses relating to European British subjects in the British Indian Acts were omitted in the original Bill for the simple reason we were not legislating for European British subjects *in particular*.

The next three questions raised in the note were discussed in the Committee and the Committee concluded that it is not advisable to introduce any change in the Bill in these respects.

MR. D. SHAMA RAO seconded the motion, which was put to the Council and carried.

MR. NARAYANA RAO'S next motion, *viz.*, the insertion of the word and figure "July 1911" after the words "the first day of" and in place of the figure "19" in clause 1 (3) of the above Bill having been duly seconded and carried, he then moved that the above Bill as amended be taken up and passed at a subsequent meeting of the Council. Mr. D. Shama Rao, seconded the motion which was put to the Council and carried.

The Mysore Limitation Bill.

MR. H. V. NANJUNDAYYA in moving that the ordinary rules of business regarding publication be suspended and the report of the Select Committee on the Limitation Bill be taken into consideration and adopted by the Council, said—

Sir,—This is a consolidating Regulation and was enacted in British India mainly with the view of obviating the difficulties that arose from the decision of the Privy Council that the period of limitation to be allowed in respect of suits on mortgages of property in forms other than what is known as the English form was only 12 years, and that this rule applied even in the case of suits on usufructuary mortgages. We here are unaffected by that decision and our object in re-enacting the Limitation Act is only to consolidate the law on the point adopting such changes in phraseology as are necessitated by the new Code of Civil Procedure. This was also one of the reasons which weighed with the Government of India in re-enacting the measure.

MR. H. V. NANJUNDAYYA then dwelt on some of the important alterations made in Schedule II of the Bill by the Select Committee and proposed that the ordinary rules of business regarding publication be suspended and the Report of the Select Committee be taken into consideration and adopted by the Council.

MR. C. SRINIVASIENGAR seconded the motion, which was put to the Council and carried.

MR. H. V. NANJUNDAYYA'S next motion for the insertion of the word and figure "July 1911" after the words "the first day of" in clause 1 (3) of the Limitation Bill was second by MR. C. SRINIVASIENGAR and carried by the Council.

At this stage Mr. Rangiengar pointed out a verbal mistake in column 3 of Article 174 of the first schedule, *viz.*, the occurrence of the word "decree" for "process" which was to be found in the article in the old Act which the present Article 174 replaced. His motion for necessary change being made in the article was adopted by the Council.

MR. H. V. NANJUNDAYYA then moved that the Limitation Bill as amended be taken up and passed at a subsequent meeting of the Council. MR. C. SRINIVASIENGAR seconded the motion, which was put to the Council and carried.

The Mysore Insolvency Bill.

In presenting the Report of the Select Committee on this Bill MR. H. V. NANJUNDAYYA said,—Sir,—Mr. Tirumalachar, who was one of the members of the Committee, having unfortunately resigned, we had to proceeded with only four members on the Select Committee. All that is to be stated about the Bill is stated in the Report of the Select Committee. I do not think it necessary to say anything more. I now move that the rules of business regarding publication be suspended and that the report of the Select Committee on the above Bill be taken into consideration and adopted by the Council.

MR. C. SRINIVASIENGAR seconded the motion.

MR. D. VENKATARAMAIYA.—SIR,—I cannot approve of the Select Committee's omission of clause 25 of the Bill. It will be very difficult for a creditor to go all the way to Court in person if he resides at a great distance from the Court-house.

MR. S. NARAYANA RAO.—Sir,—With your permission I would move that clause 25 be retained. The Select Committee have omitted that clause. I move for its retention as it is a very useful provision. I have already mentioned in the note I appended to the report of the Select Committee the reason why I would recommend its retention. It facilitates the proof of the claim of a creditor who might be living at a great distance from the Court-house or who might be unable to personally appear in Court. There are also safeguards against false claims being advanced; for, the Court can call for other proof of the claim either of its own motion or at the instance of any one of the other creditors. The receiver also may move the Court for removing from the list of the names of creditors the name of any one who has advanced a false claim. When there are so many safeguards there is no danger in allowing the provision for this mode of proof to be retained in the Bill. The clause has been omitted for the reason that the country is a very small one and hence that every creditor can conveniently arrange to have his case represented in Court. But even in the case of creditors residing within the Mysore Province, there may be inconveniences which render their personal attendance in Court difficult. Merchants in Benares and other distant places have dealings with persons residing in the Province of Mysore and they send very valuable consignments. If a merchant at Bangalore becomes an insolvent, not only those of his creditors who live outside the Mysore Province will be inconvenienced but also those who live in the Province itself in distant places like Shimoga and Kadur. This inconvenience which a creditor has to suffer in proving his claim would be an obstacle in the way of trade. Merchants may become too wary and may not trust the people of Mysore. On these several grounds the retention of this clause is desirable. I, therefore, move that this clause be retained.

MR. D. VENKATARAMAIYA.—Sir,—I beg to second the motion for the retention of the clause. Because, if the clause were retained, a creditor would save a good deal of time and money by submitting an affidavit from his own place instead of travelling all the way to the Court-house and proving his claim. If the debtor is an insolvent, nothing can be gained by the creditor appearing in person in Court. A provision like the one proposed will be very useful.

MR. A. RAMANNA.—Sir,—The object of the Insolvency Act is that the creditor should not lose much good money after bad. In case the debtor is an insolvent, the creditor can get only very little. So it is not proper to lay down that he should appear in person or by pleader—which means expense—having regard to the fact that there is very little chance of his claim being fully satisfied.

MR. H. V. NANJUNDAYYA.—Sir,—Government would leave this motion to the judgment of this Council. For my part, I am quite opposed to the amendment. There is not only the ease with which the claim can be proved by the creditor which has to be considered but one has also to see that the proof is of a kind which can be safely acted upon. Supposing the creditor must go himself to the Court-house, he must produce his vouchers, produce evidence and submit himself and his witnesses to cross-examination in open Court. Now by this amendment you mean to do away with all those safeguards. You may perhaps do so safely in many cases. But it is at the same time quite probable that many unjust claims will be advanced. If a person really owes debts to the extent of Rs. 200, a dishonest creditor may say that he owes to the extent of Rs. 2,000. And if the debtor is worth only Rs. 500 you will see what the real creditor will get. The dishonest creditor and the debtor may collude with each other and defeat the interests of the real creditors. If you take an affidavit from a person, it means that he is one who, in ordinary circumstances, can be trusted to speak the truth. Now, suppose, there is a large firm which has, say, 50 clerks who keep various sorts of accounts. One keeps say, a ledger, another a day-book, a third a cashbook and so on. In such a case there is no difficulty in ascertaining the truth. But take the case of a petty shop-keeper who keeps just a memorandum of articles sold in some torn book. Do you think it is safe to rely on his affidavit? How many people are there, the volume of whose transactions, whose credit and general status in society make it safe for us to rely on their affidavits? I fear it is only very few. It is more on this account than on the balance of ease and difficulty of proof that I was for omitting it. I think that the state of business here and the kind of cases that are likely to occur are not such as to justify our accepting proof by affidavit of the claims of creditors.

MR. A. RANGASWAMI IYENGAR.—Sir,—I wish to add a little to the remarks made in support of the amendment. All the remarks of the mover referred only to the question of admitting the affidavit in evidence. They had no reference to the weight to be given to that evidence. From the mere fact that the affidavit is admissible in evidence, it does not follow that it should be believed as true. All the arguments of my learned friend, Mr. H. V. Nanjundayya, are directed to the contingency in which such an affidavit is taken as actual proof of the fact stated therein. There is the Court, there are the opposing creditors. If all these do not see reason to call the truth of the statement in the affidavit in question, the Court may in its discretion accept the claim on the strength of the affidavit or call for further proof of the claim set forth therein. But if they find reason to suspect collusion between the debtor and the creditor who has filed the affidavit, they have got a right to object to the affidavit being admitted in evidence, and then the Court must call for other proof. The affidavit is only something like a plea put forward before the issues are framed. It is only a question of admission in evidence which we are now considering. In a case of insolvency it will not only save expense but save time to the Court itself. Very often if a creditor is to appear in person or is to engage a lawyer, he has to spend a large sum of money. And the tendency in insolvency proceedings is to minimise the circumlocution of the proceedings. I think it is better to minimise the cost of the proceedings as far as possible. As the amendment is intended only to give an opportunity to the creditor of proving his debt, I think it may well be adopted.

MR. C. SRINIVASIENGAR.—Sir,—Mr. Rangaswami Iyengar seems to think that the amendment, if adopted, would accelerate business. Far from hastening business it would retard it for the simple reason that there are several creditors and each of them will be naturally anxious that every claim should be proved in as satisfactory a manner as possible. They are not likely to agree as to the sufficiency of proof; and so they will only ask for better proof, so that much time will be lost rather than gained by adopting this mode of proof.

MR. S. NARAYANA RAO.—Sir,—Much of what I had to say has been stated by Mr. Rangaswami Iyengar. I may mention one or two things. It was stated that this mode of proof would prolong litigation. Any person may challenge and call for better proof of the claim advanced in the affidavit. My answer is, till challenged the affidavit would be accepted as true. The least counter-evidence would make the Court suspicious of the allegations in the affidavit and then the Court will call for better proof. But a party calling for better proof will think twice before he challenges the claim of a respectable merchant.

In the case of merchants who have no credit and whose words cannot be taken implicitly, the Court itself will call for direct proof of the claim. I do not think that proof by affidavit is liable to prolong litigation in insolvency proceedings any more than in other proceedings. Some delay must be expected in all legal matters and I don't think that there is any special cause for delay in this. I, therefore, think that this kind of proof may be accepted.

MR. A. RAMANNA.—Sir,—In *ex parte* cases, affidavits of plaints are sent from distant places and decrees are passed. What I mean is where the plaintiff cannot come to the Court, but is allowed to send an affidavit to the effect that his claim is true, the truth of the affidavit being sworn to in the presence of a Magistrate, the claim is decreed. There could not possibly be any harm in accepting the affidavit as proof where there is no contention at all. If there is contention, vouchers., etc., would be needed.

The amendment was then put to the vote and carried by a majority. (7 *for* and 6 *against.*)

In moving for the retention of clause 53 of the above Bill, MR. S. NARAYANA RAO said,—Sir,—With reference to this clause, I think that it is nothing less than a crime to borrow money without disclosing that the borrower is an undischarged insolvent. The reasonableness of this amendment is quite clear. So I need not dwell on it at any length. If the borrower is in insolvent circumstances and borrows when he knows that he will not be in a position to discharge the debt, on the due date, he is guilty of cheating; and so he should be made punishable and this clause which makes such a deception punishable should be retained. That would be a very great check upon persons receiving money from others when they are insolvent.

MR. A. RANGASWAMI IYENGAR seconded the motion and said :—

Sir,—An undischarged insolvent borrowing money is something like a person who gets money from another by cheating. He is sometimes one who has just got out of the Civil Jail on the understanding that his insolvency petition will be inquired into after he places his property in the custody of the Court, or against whom proceedings have been taken by a creditor. In either case he is a person labouring under a charge of being a man without means. In such a case it is in the interests of society that he should not be enabled to borrow without disclosing his defect. If people are willing or if they know that he is an insolvent, it is a different thing. If because he happens to be out of the jail, he borrows money without disclosing the fact that he is an insolvent, that would be very much like cheating. So such a provision is necessary in the interests of society.

MR. H. V. NANJUNDAYYA.—Sir, I do not think the insolvent is such a common phenomenon in this country. If he makes a false representation he is liable to be punished. I am not in favor of multiplying penal provisions needlessly or to provide for rare eventualities.

MR. K. P. PUTTANNA CHETTY.—Sir,—I do not think it is quite necessary for a man to declare himself to be an undischarged insolvent each time he wants to obtain some small credit. I think the clause places an undue strain upon him. It is for the creditor to assure himself of the solvency of the borrower and not for the debtor to volunteer a statement which must naturally go against his interest. An undischarged insolvent may often be a man worthy of confidence. He may have come by his misfortune owing to circumstances over which he had no control and he may in reality be very much more worthy of confidence than many perfectly solvent persons. In our country an insolvent is very well known locally. It is not necessary for a declaration to be made. To my lay mind it appears that the omission of that provision was very proper.

The motion was then put to the vote and lost, 5 voting *for* and 8 *against.*

MR. A. RANGASWAMI IYENGAR.—Sir,—In clause 16, sub-clause (3), referring to 'reputed ownership' has been omitted. I think this also is a provision for the protection of the public. Whether a society is a commercial one or not, it does not very much alter the question. In a commercial society, people are very wary and know the difficulties and pitfalls which are met with in money-lending. In an elementary state of society where people have not very much advanced in trade, people are not so careful in their dealings and so the provision is all the more necessary. Reputed ownership carries credit with it and induces people to lend

money and then when the time comes the creditor is sent to the wall. I think that in order to meet cases of this kind it is better to keep that provision also. It is not right to say that it is necessary in an advanced society. That is the only reason given by the Select Committee for removing this provision and I do not think it is a good one.

MR. M. C. RANGIENGAR seconded the proposition and said,—Sir,—In fact the amendment follows from the law of Estoppel. Where a man allows another to believe that a certain person is the owner of certain property and to lend him money on that supposition, he cannot afterwards be allowed to deny it. Therefore, where a person allows that, he cannot afterwards be allowed to say that the property is his.

At this stage the Council adjoined till the next day.

Wednesday, the 23rd November 1910.

The Council met at 12 noon.

All were present except Messrs. K. S. Dorasami Iyer and D. Devaraj Urs among official members and Messrs. M. Narayana Rao and A. Ramanna, among non-official members.

The discussion on sub-clause (3) of clause 16 of the Insolvency Bill was resumed.

MR. C. SRINIVASIENGAR.—Sir,—From the beginning I have had serious misgivings as to the expediency of enacting a general law of insolvency for this State. For the reasons, however, stated in the Report of the Select Committee, I have allowed to be persuaded myself to agree to this modified measure. Several provisions in the British Indian Act which, in our opinion, are unsuited to the conditions of Mysore have been omitted. The Bill in the form in which it has been placed before the Council by the Select Committee proceeds on the lines of least resistance and tries to steer clear of needless difficulties and complications. The British Indian law which we are trying to follow is based on the English law of insolvency. Many provisions of that law are far ahead of the requirements of a State like Mysore. One of these is the provision which attempts to draw a subtle distinction between true ownership and reputed ownership. That is a provision which can only apply to large trading centres. That this is so is recognised by the British Indian Legislature itself as will be seen from the fact that instead of making the entire Act applicable as a matter of course throughout India they have provided for a large number of its provisions being declared inoperative in those parts of British India which are not sufficiently advanced to stand in need of them and among the several sections which could thus be held inapplicable to backward provinces or towns is this sub-section (3) of Section 16. Mysore is a small State and one place in it is as good or as bad as another. There is not much to differentiate one place from another, and I think it is a mistake for us to adopt in its entirety the Act which as regards some of its provisions could be declared inoperative even in portions of British India. Now my contention is this. The members of the Council are aware that this sub-clause is one which is not intended to be applied all over the country; and that its operation is to be limited only to particular places. Therefore, local Governments in British India have been authorised to declare by notification that this, among certain other provisions, shall not apply to other places. It is no disparagement to Mysore to say that we here are not as advanced as the people of large commercial places like Calcutta, Madras or Bombay or Ahmedabad. That being so, I do not see why we should adopt this provision, the retention of which is the object of the amendment. The only question for our Courts to decide is whether a certain property belongs to the insolvent or not. It is to be determined upon a consideration of the evidence put before the Court, and the probabilities of the case. If, in any particular case, the Court is satisfied that the true owner has led the public to believe that the ownership of the property in question resided in the ostensible owner and that he was, to all intents and purposes, the person entitled to deal with the property, the Court will come to such reasonable decision as the circumstances of the case warrant. As I understand this provision, it seems to me that it only provides for a presumption that in certain

cases the person in possession of certain property is the owner of it. I do not think that any specific provision is required in the enactment for that purpose. We think that Mysore does not require a measure of this kind and I humbly submit for the consideration of the Council that the restoration of the provision is undesirable.

MR. S. NARAYANA RAO.—Sir,—Clause 16 deals with the presumption, in proof of ownership of certain property in a summary way. The omission of this clause in the Bill does not preclude the Court from acting upon the general principles of the law of Estoppel. If a person makes the public or any particular individual believe that a certain property, though belonging to him, really belongs to another, he will not be permitted under the general law of Estoppel to deny that other person's right. So he cannot assert his own right to the prejudice of the person who acted upon such a belief. So that principle of law will always be available whether this provision is to be in the Bill or not. The object of this provision is to provide a summary mode of proof. In the ordinary course there should be a separate suit for a declaration of the right of an insolvent debtor to property. Till then the real owner will not lose his right. But the only advantage gained by this provision in the Bill is that it provides a summary course. There are several such provisions in this Bill which enable a Court summarily to dispose of certain cases in which till now the parties had recourse to regular suits. It is an advantage to a commercial community, no doubt; because, the asset will be available to all the creditors with the least possible trouble. As the case goes before a very high tribunal such as the Court of a District Judge, there is the assurance that this summary provision will be properly administered. It is only to meet the requirements of a commercial community that the clause is to be retained in the Bill. It is quite clear that it will not be needed in every part of the Province; but whether Mysore is one that does not need it is the question we have to decide. If clause 54 had been retained the existence of this cause would have been harmless, because it would have been in the power of Government not to put this in force in any particular place or places. But as that clause has been removed, to introduce this clause in question unqualifiedly seems to me somewhat undesirable.

MR. H. V. NANJUNDAYYA.—Sir,—The rule about reputed ownership must be understood as an exception to a well-known rule of law, that for my debts somebody else shall not be liable. For example, I take charge of any goods belonging to another person and sell them to somebody. He will not get a title. He will lose his money also. In English law there is a rule known as the rule of 'market overt.' There are certain things the property in which, even if a person without title sells it in what is called 'market overt,' will pass. But even that rule is not in force in India. Then there are certain things the title to which passes by delivery, such as negotiable instruments and currency notes. That is perhaps the only exception by virtue of which property in goods passes by a sale effected by a person other than the owner. So, after all, if we do not have this rule of reputed ownership it is not much of an injustice. It cannot be said that any rule of equity or fairness is contravened. It is a rule that has been introduced into countries where there is a great deal of trade going on. It is intended for the protection of parties who enter into money-lending transactions without knowing that the goods on the security of which money is lent belong to persons other than those with whom they are dealing. It is not quite accurate to say, as my friend Mr. S. Narayana Rao said, that if we omitted the rule of reputed ownership, we can still fall back upon the rule of Estoppel. For that rule requires a declaration, act or omission on the part of the person who is to be estopped. It applies only where a person has done something to deceive another, has made him believe in a certain state of things and that other has consequently changed his position for the worse. But the rule of reputed ownership is a far wider rule and does not require, for its operation, the condition that a third party should be actually prejudiced solely by the act or omission of the real owner. Of course there is a rule of equity also in this rule of reputed ownership; otherwise it would not have been thought of. That is, when a person is engaged in trade, the persons who deal with him have not got either the time or the means to enter into an enquiry as to whether he has got property in all the things he is dealing with or not. They give him credit on what appears on the surface to be the state of his trade and the state of his credit. In that case one of two parties must suffer. It is better the person who gives him credit suffers. Supposing a person has transferred bank shares to the value of

Rs. 20,000 to another, a stranger would have no means of knowing whether the shares stand on his own behalf or on behalf of a different person. The outsiders have no means of knowing it. They give him credit taking all the facts that appear to affect the credit of the man in the market into consideration. Then the question is, when he becomes an insolvent, who is to suffer—either he or the person who has given him credit? On the whole, it is considered that it is much fairer to make the true owner who deliberately chose to trust the insolvent with his goods suffer rather than the person who gave him credit on the faith of what the insolvent had been dealing with as his own property. That is the principle on which this rule of reputed ownership is founded. Now the question before us is whether it is necessary that such a rule, which is to a very great extent a technical rule of a highly developed system of commercial law, is to be applied to the State. It was thought by the Select Committee that for this purpose this State may fairly be regarded as analogous to one of those tracts to which the Government of India considered that certain sections of the Bill should not apply. There is not a single centre of great trade activity, except perhaps the City of Bangalore. On that ground I think it would be quite enough for us to be satisfied with the law of Estoppel as contained in the Evidenc Act, and we may dispense with the provision which I think, is quite unnecessary and may possibly do some injury in the circumstances in which we are placed. I would therefore vote against the amendment being carried.

MR. A. RANGASWAMI IYENGAR.—Sir,—I think I must thank the mover of the Bill for the valuable exposition he has given us of the principle of Estoppel and of the doctrine of reputed ownership and the guiding policy which led the Government to enact this provision and the principles on which we are justified in enacting that. As between the equities subsisting between the creditors and the true owner, the equity of the latter is to prevail. I only put it to the Council to consider whether in such a case the creditors should have the protection of the law or the true owner who was careless and allowed the property to be dealt with by the insolvent debtor. Is it desirable that the legislature should leave the interests of creditors to be neglected or is it desirable to throw the burden of protecting his own interests on the true owner? That is one important point for us to consider. The defence for removing this section is based upon two or three inconsistent pleas. One is that the Court itself can take notice of it without such a provision. If it can, it is no reason why that provision should not be incorporated. The section is divisible into two portions. One is a question of fact. It is, whether the ture owner allowed others to believe that the the involvent was owner. Then the question of law would come in as to whether, taking it for granted that he allowed others so to believe, his act was such as to justify a Court of insolvency in ordering his property to be included in the insolvent's assets. It is very much better that there should be a positive provision. I put it to the Council to say whether, after all, it is such a difficult provision to administer; and even if it is difficult, whether it is not better that it should be retained and whether the true owner would not be able to protect his interests.

DEWAN.—Can you give us examples of reputed ownership as opposed to real ownership?

MR. A. RANGASWAMI IYENGAR.—Sir,—Suppose a man has got a machine and leaves it with a carpenter or a manufacturer and allows him to work with it in his manufactory and turn out materials, and leaves it for years in his possession That would be a case of reputed ownership.

MR. NANJUNDAYYA also pointed out instances of ownership from Smith's 'Merchantile Law.'

The motion for the retention of clause 16 (3) was put to the vote and lost (4 voting *for* and 5 *against*).

The original motion was then put the vote and carried.

MR. H. V. NANJUNDAYYA moved that the word and figure "July 1911" be substituted for the word and figure "January 19 " in clause (1) (3) of the Mysore Insolvency Bill. Mr. C. Srinivasiengar seconded the motion which was carried.

MR. H. V. NANJUNDAYYA then moved that the Mysore Insolvency Bill as amended be taken up and passed at a subsequent meeting of the Council. Mr. C. SRINIVASIENGAR seconded the motion, which was carried.

A Bill to consolidate and amend the law relating to Courts of Small Causes in Mysore.

MR. H. V. NANJUNDAYYA.—Sir,—When introducing the Bill to consolidate and amend the law relating to Courts of Small Causes in Mysore, I stated that the Bill was framed on the basis of the British Indian Act, by adopting the provisions of that Act making only such necessary changes as were necessary to suit the local requirements. But on going to the Select Committee it was considered that it would be better to recast the Bill altogether. The original Bill made Courts of Small Causes Courts *sui generis*. The members of the Select Committee considered this to be quite unnecessary. A Small Cause Court is as much a Civil Court as the Court of a District Judge, the Court of a Subordinate Judge or the Court of a Munsiff. The Select Committee could not see any reason why it should be excepted from the operation of the Civil Courts Regulation. They were unanimously of opinion that instead of repeating the provisions that are already contained in the Civil Courts Regulation, the Courts of Small Causes might also be brought under the Civil Courts as defined in the Civil Courts Regulation. The adoption of this course has necessitated a few verbal changes in that Regulation, but it has also enabled us to do away with a number of sections in the Bill, such as those relating to the appointment of ministerial officers, use of a seal, etc., all of which are provided for in the Civil Courts Regulation. Another provision on which the Select Committee bestowed their careful consideration is the schedule to the Bill which enumerates the suits cognisable by a Court of Small Causes. The Committee were of opinion that a positive enumeration of such suits is, on the whole, a far better mode of fixing the jurisdiction of Small Cause Courts than the negative method employed in the British Indian Act. The Committee have therefore recommended the retention of the schedule with only a few verbal changes. The Council is aware that the Bill contains a few novel provisions, namely, those contained in Clauses 14 A and 14 B. The former relates to non-suiting and enables the Court to non-suit the plaintiff in cases where the Judge is of opinion that he has not proved his case. In such a case he may bring another suit on the same cause of action, subject, however, to the law of limitation. The difference between this provision and the provision regarding withdrawal of suits contained in the Civil Procedure Code is that, under the new clause, a Court can take action *suo motu* whereas, under the Civil Procedure Code, action can be taken only on the application of the plaintiff.

Clause 14 B refers to trial of suits by composite Courts; namely, with the aid of another Civil Judge or Magistrate and two jurors to be selected in accordance with rules to be framed in this behalf by the Chief Court. The Select Committee were of opinion that this provision is calculated to ensure greater finality to judgments of Small Cause Courts and also to inspire greater confidence in the minds of the public in their decisions. They have, however, recommended a few changes. Under the clause as it originally stood only suits exceeding Rs. 100 in value could be tried by a composite Court. As the limit of Small Cause jurisdiction nowhere exceeds Rs. 100 except in the City of Bangalore, the clause would have been of no practical use outside Bangalore; and they have therefore recommended that the limit be lowered from Rs. 100 to Rs. 50. Another change recommended by the Committee is that the rules framed in the Chief Court under this section should receive the sanction of Government before they can acquire the force of law. And, finally, as a measure of precaution, the Select Committee have recommended that the provisions of this clause should force only in such Courts and from such dates as the Government may notify in the official Gazette.

Having next dealt with certain other minor changes effected by the Select Committee, MR. H. V. NANJUNDAYYA moved that the rules of business be suspended so as to permit of the Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts of Small Causes in Mysore being taken into consideration and adopted by the Council.

MR. A. RANGASWAMI IYENGAR seconded and the motion was carried.

MR. H. V. NANJUNDAYYA'S next motion that the Report of the Select Committee on the above Bill be considered and adopted by the Council having been seconded, and carried by the Council, he moved that the word and figure "July 1911" be inserted after the words "the first day of" and in place of the figure "190 ..." in clause 1 (3) and the words "Schedule I" be substituted for "the Schedule" in clause 4 of the Bill as amended by the Select Committee.

MR. A. RANGASWAMI IYENGAR seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA'S next motion that the following sub-clause (*b*) be added to Clause 2, *viz.*—

"The enactment referred to in Schedule II is amended to the extent specified therein,"

and the present sub-clause (*b*) be changed into sub-clause (*c*) having been seconded by MR. RANGASWAMI IYENGAR and carried by the Council, he moved that the the above Bill as amended be taken up and passed at a subsequent meeting of the Council. MR. RANGASWAMI IYENGAR seconded the motion, which was put to the Council and carried.

The Council then adjourned *sine die*.

T. ANANDA ROW,
President.